THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5713 of 2006

03.10.2006

Between:

M/s.Rock Stars, represented by its Managing Partner,
Sri K.R.Kurupa Sami, Ameerpet, Hyderabad

… Petitioner

AND

The Secretary, Government of Andhra Pradesh,
Industries and Commerce Department, Secretariat, Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5713 of 2006

ORDER:

The petitioner is a firm, which was granted mining/quarry lease by the second respondent for black granite over an extent of 5.25 Hectares in survey No.198/A situated at Tharlapally Village of Hanumakonda Mandal in Warangal District. The lease is valid up to 08.1.2012. The second respondent issued notice on 19.3.2005 calling upon the petitioner to show cause as to why action should not be taken determining the lease under Rule 12(5)(h)(iii) of A.P. Minor Mineral Concession Rules, 1966 (the Rules, for brevity). The petitioner submitted explanation on 08.4.2005 requesting forty-five (45) days time for clearing the arrears of advance dead rent. The second respondent issued proceedings dated 11.7.2005 determining the quarry lease for non-payment of the advance dead rent for the year 2005-2006 as per Rule 12(5)(h)(xii) of the Rules. Aggrieved by the same, the petitioner filed a revision petition before the first respondent, who by order dated 06.3.2006 confirmed the orders of the second respondent and further directing to process the quarry lease application of the fourth respondent herein. In this writ petition, the order of the first respondent is assailed.

Learned Senior Counsel for the petitioner submits that the impugned order dated 06.3.2006 vitiated by non-application of mind and illegal. He further submits that in similar cases respondents 1 and 2 have extended time to the lessees to pay the arrears of dead rent/seigniorage fee and similar treatment is denied to the petitioner. It is also the submission of the learned Senior Counsel that the petitioner has sent a letter on 08.4.2005 requesting for transport permits as well

as extension of time for payment of advance dead rent for the year 2005-2006. **Per contra**, learned Government Pleader for Industries and learned Counsel for the fourth respondent submit that the petitioner did not submit any explanation to the show cause notice and that though sufficient time was given to the petitioner to pay the advance dead rent for the year 2005-2006, the petitioner did not pay the same and that the petitioner never sought time for payment of the amount. Learned Counsel for the fourth respondent also submits that the fourth respondent has already granted lease in respect of the same area, that the fourth respondent incurred heavy expenditure for purchase of machinery and, therefore, no interference is called for. Learned Government Pleader has also produced the file from the Secretariat for perusal of this Court.

Rule 10(3) of the Rules requires every lessee to pay the dead rent for the first year at the time of execution of lease deed and for the subsequent years every year in advance. But seigniorage fee shall have to be paid before the mineral is removed from the leased area. Rule 12(5)(h)(iii) of the Rules, has a condition of license/lease requires the lessee to pay the seigniorage fee as per the rates prescribed in schedule-I in advance for the quantity intended to be dispatched and submit original challans to the Director of Mines and Minerals to obtain dispatch permits/ way bills. Clauses 5 and 7 of the lease for minor minerals in Form-G deal with payment of dead rent and seigniorage fee. Clause 7 requires the lessee to pay the dead rent every year in advance.

This legal position is not denied. While issuing the show cause notice on 19.3.2005, the second respondent proposed to determine the lease under Rule 12(5)(h)(iii) of the Rules, which has no application at all, because it is not the case of the second respondent that the petitioner removed the mineral without complying with Rule 12(5)(h)(iii) of the Rules. This aspect of the matter has not been specifically raised by the petitioner presumably for the reason that the show cause notice alleges that the petitioner failed to pay advance dead rent for 2005-2006. Be that as it is, after receiving a show cause notice dated 19.3.2005, the petitioner sent a reply on 08.4.2005 requesting 45 days time to pay advance dead rent and for issue of permits to transport already extracted mineral. The second respondent however proceeded as if the petitioner did not submit any explanation. But it is observed by the second respondent as under.

> This office in the reference 3rd cited has issued a show cause notice to the lessee M/s.Rock Stars and directed to rectify the above breaches committed within 10 days from the date of receipt of the Notice. But no rectification report has

> been received from the lessee even though they have acknowledged the receipt of the Show Cause Notice on 2.4.2005. Finally the ADM&G, Warangal vide reference 4th cited has recommended for determination of Q.L for non-payment of Advance dead rent for the year 2005-2006… … … …In the circumstances the Quarry lease held by M/s.Rock Stars for Black Granite over an extent of 5.25 hectares in Sy.No.198/A of Tharalapally Village, Hanamkonda Mandal, Warangal District is hereby determined and the security deposit is hereby forfeited to the Government as per Rule 12(5)(h)(xii) of APMMC Rules 1966.

A reading of the above would show that the petitioner was directed to rectify the breach of non-payment of advance dead rent. The file produced before this Court does not contain any such direction and, therefore, this Court has to agree with the contention of the petitioner that no such order was passed extending time for payment of advance dead rent. The submission of the learned Counsel for the fourth respondent that the petitioner was granted sufficient time to pay the mineral revenue, in the absence of any material, cannot be accepted.

While considering the revision petition filed by the petitioner, the first respondent obtained remarks of the second respondent. Dealing with these remarks, the first respondent, in the impugned order, observed as under.

> When called for the remarks of the Director of Mines and Geology, on both the Revision Applications (one implead petition), the Director of Mines and Geology has reported that M/s.Rock Stars have given reply to the Show Cause Notice on 08.4.2005 and in their reply, they have requested 45 days time for payment of Advance Dead Rent for the year 2005-06. The time required was also allowed to them and after lapsing of 90 days time, the determination proceedings was issued by Director of Mines and Geology. Hence the determination proceedings dated 11.7.2005 hold good.

The above observations in the impugned order would lead to inference that the petitioner's reply dated 08.4.2005 was received by the second respondent and the petitioner requested for forty-five (45) days time. Though the second respondent mentioned in his report the time was granted, there is no material whatsoever to that effect. Learned Counsel for the petitioner has placed before this Court the proceedings No.28295/R6-2/05, dated 21.10.2005 issued by the second respondents in respect of M/s.Parameswari Minerals and the proceedings in M.No.995/M.II(1)/2006-3, dated 10.3.2006 issued by the first respondent in respect of M/s.Kulandeswara Granites, Chittoor,

which would show that the authorities extended time to the lessees for payment of mineral revenue. This aspect has to be considered by the competent authority. As all these matters are not considered, this Court is of considered opinion that the matter has to be remanded to original authority for fresh consideration.

Accordingly, the writ petition is disposed of, setting aside the impugned memo dated 06.3.2006 issued by the first respondent confirming the proceedings of the second respondent dated 11.7.2005. The matter is remitted to the second respondent for fresh consideration. It shall be open to the petitioner as well as fourth respondent to file additional material before the second respondent. The second respondent is directed to dispose of the matter within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

_____

(**V.V.S.RAO,J**)

October 03, 2006.

YS